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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,764	01/26/2004	Duane D. Kriegshauser	2004 - Kriegshauser.Duane	8781
7590	04/22/2005		EXAMINER	
Randal D. Homburg P.O. Box 10470 Midwest City, OK 73140-1470			KIM, CHRISTOPHER S	
			ART UNIT	PAPER NUMBER
			3752	
DATE MAILED: 04/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/764,764	KRIEGSHAUSER, DUANE D.
	Examiner Christopher S. Kim	Art Unit 3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 January 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Response to Amendment

1. The response filed February 3, 2005 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "quick connect fittings" recited in claim 3 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement

Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. The term "low" in claims 1 and 2 is a relative term which renders the claims indefinite. The term "low" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is uncertain what constitutes "low" voltage.

Claim Rejections - 35 USC § 103

6. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd (3,584,788) in view of Cooke et al. (3,481,545).

Lloyd discloses a boom sprayer having: having booms 17, 18; marking devices 30, 31; pumps 33; and marker storage tanks 32; spray nozzles 36; a three way power switch 57. Lloyd differs from what is being claimed in the air compressor, foam tank, air line and foam tubing. Cooke teaches a foam marker mounted to a boom sprayer (see

figure 4) that includes a compressor 10, a foaming solution bottle 8, air line 28 (column 3, lines 1-10), foam tubing 38. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the marker storage tank and pump of Lloyd with the compressor and foam tank of Cooke to reduce pollution by replacing the chemical marker of Lloyd (column 2, lines 29-34) with the foam of Cooke.

Examiner takes official notice of threads for engaging and quick connect fittings.

Response to Arguments

7. Applicant's arguments filed February 3, 2005 have been fully considered but they are not persuasive.

In response to the drawing object, applicant argues that the specification discloses the quick connect fittings 45a, 45b, 75a, 75b and that figures 2 and 3 show those reference numbers. While the specification discloses the quick fittings and the reference numbers are shown in the drawings, the drawings do not show "quick connect fittings." The "quick connect" feature of the fittings is not shown in the drawings.

Applicant argues that the term "low" is not indefinite because one of ordinary skill in the art would understand the scope of the invention. Applicant give the examples of 6 volt and 12 volt DC battery for operation of small gas combustion engine in lawn and garden tractors, neither of which is supported by the specification. The rejection under 35 USC 112, second paragraph is not on the basis that "low voltage" is not known, but rather, the degree of voltage encompassed by the term "low" is indefinite. While applicant considers 6 volts and 12 volts to be considered low voltage, Nikkel et al. (see

U.S. Patent Number 5,170,849, column 11, lines 10-15.) considers 2 volts DC to be low voltage and 6 volts DC to be high voltage. What voltage is required to meet applicant's claim of "low voltage?"

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that Cooke does not disclose the header as indicated in the present marking apparatus. Cooke discloses a header 30, 32 and outlet chuck 36, 40.

Applicant argues that Cooke does not have any electrically active application in producing the generated gas. Cooke discloses, in column 3, lines 5-10, "If an air compressor is used..." Burenga (U.S. Patent Number 4,077,747; column 1, lines 1-15; column 2, line 65 through column 3, line 10) is provided as evidence that an air compressor usually is equipped with pressure gauge, a pressure regulator, a relief valve, control switches, and other necessary fittings."

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, motivation is found both in the references and in the knowledge generally available to one of ordinary skill in the art. One of ordinary skill in the art would have recognized that the foam of Cooke would have produced less pollution than the chemicals used in Lloyd. Additionally, Cooke discloses, in column 2, lines 1-21, that the foam is readily visible, increases productivity of the operator, and economical.

In response to applicant's argument that Lloyd and Cooke are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Lloyd and Cooke are in the field of applicant's endeavor: boom sprayers for agricultural marking.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim
Primary Examiner
Art Unit 3752

CK